HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.26637 of 2005

Between:

All India Trade Union Congress
Visakha District Council, Visakhapatnam, rep. by its
General Secretary Sri M. Ananda Rao … Petitioner

And

The Government of Andhra Pradesh represented
By its Principal Secretary, Municipal Administration &
Urban Development Department, Hyderabad
And others

… Respondents

:: ORDER::

Counsel for the Petitioner: Sri O. Manohar Reddy

Counsel for Respondent No.1: Government Pleader for Municipal Administration and Urban Development

Counsel for Respondent No.2: Sri Vilas V. Afzulpurkar, Senior Advocate with
Ms.V. Preethi Reddy

Counsel for respondent Nos.3
and 4: Sri V. Venkata Ramana

Counsel for respondent No.5 : Sri Deepak Bhattacharjee

September 28, 2006

Per G.S. Singhvi, CJ

Whether the doctrine of public trust can be invoked by the Court for nullifying the decision taken by Visakhapatnam Urban Development Authority (for short 'VUDA') to utilize
50 acres of land situated in Rushikonda Village of Visakhapatnam for a mega housing project in collaboration with private party is the question which arises for determination in this petition filed under Article 226 of the Constitution by All India Trade Union Congress in the form of public interest litigation.

The facts necessary for deciding the aforementioned question, as culled out from the pleadings of the parties and documents produced by them are as under:

(i) Vide G.O.Ms.No.912, MA, dated 9-11-1987, the Government of Andhra Pradesh accorded administrative sanction for development of Satellite Townships in the areas falling within the jurisdiction of certain urban development authorities. On the same day, the State Government issued another order i.e., G.O.Ms.No.913, MA and laid down the guidelines for preparation of plans and their implementation for establishment of Satellite Townships. Paragraphs 1, 3, 9, 11 and 12 of G.O.Ms.No.913, MA, dated 9-11-1987, which have bearing on the decision of this petition read as under:

1) The development authorities shall prepare a detailed plan of the satellite townships not only comprising the Government lands, but also the private lands and they shall be prepared in such a manner that they are well integrated with the overall Master Plans of the Developed Area under the jurisdiction of the respectively Urban Development Authorities. Plans of the satellite townships shall be in the shape of Zonal Development Plans to be prepared under Section 7 of the Andhra Pradesh Urban Areas (Development) Act, 1975 and they shall be got sanctioned by the Government.

3) The area to be set-part as green belts around the townships shall form part of the plans of the townships and the existing green belts around the proposed townships in the shape of

gardens, agricultural fields etc., shall not be allowed to be converted for any urban uses. The Government lands falling within the green belts in the shape of existing hills and valleys etc., should be got afforestated so that they will ultimately develop as green belt around the satellite townships.

9) Visakhapatnam Urban Development Authority while developing any of the satellite townships facing sea should take care that the proposed development of the sea beach is made an integral part of the plan of such satellite township. The development of the Beach may include facilities for the promotion of Tourism and Recreational facilities. The Visakhapatnam Urban Development Authority should also take necessary action to develop the hills in the midst of or adjacent to the townships as Tourist spots.

11) The Hills falling within the township shall not be either sold or leased out for any purpose. They shall be suitably landscaped or afforested and used as common open spaces for recreational purpose by population as a whole.

12) To avoid any future complications for the areas of the townships covered by the Government lands, detailed layout shall be prepared after conducting the detailed physical and contour surveys. The layout plans to be prepared for these areas shall specifically indicate the sizes and areas of each plot."

(ii) After six years, the State Government issued G.O.Rt.No.948, MA, dated 24-6-1993 whereby VUDA was permitted to purchase government land on payment of cost as per the Basic Valuation Register of Registration Department. This was followed by G.O.Ms.No.120, Revenue, dated 8-2-1994, vide which lands measuring Ac.260-99 cents of Kapuluppada Village and Ac.201-69 cents of Madhurawada Village of Visakhapatnam District were alienated in favour of VUDA for developing satellite township on the condition of payment of Rs.43,000/- and Rs.40,000/- per acre respectively to the Government, Rs.3 crores to the Roads and Buildings Department for development of Visakhapatnam-Bhimili Beach Road and Rs.1.5 crores to Municipal Corporation, Visakhapatnam for shifting of water pipelines on NH-5.

(iii) After another one year and seven months, the State Government

issued G.O.Ms.No.413, MA, dated 26-9-1995 for handing over possession of land measuring Ac.462-58 cents to VUDA subject to the conditions specified therein, including the one that VUDA shall follow the procedure of allotment of plots as prescribed in G.O.Ms.No.913, MA, dated 9-11-1987. For the sake of reference, paragraphs 6, 7 and 8 of G.O.Ms.No.413, dated 26-9-1995 (as made available by counsel for VUDA) are reproduced below:

> "6. The Visakhapatnam Urban Development Authority shall follow the procedure of allotment of plots as prescribed earlier in G.O.Ms.No.913, MA, dated
> 9-11-1987 i.e., disposal of plots through public auctions.
>
> 7. The Visakhapatnam Urban Development Authority is hereby directed to develop the lands and dispose of the plots within a time frame before March, 1996 positively and also to invest any additional income received out of this project for development of Urban Infrastructure facilities within the Visakhapatnam Metropolitan region after obtaining the approval of the Government.
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> 8. The District Collector, Visakhapatnam shall supervise the disposal of plots, realization of revenue and necessary deposit with the Government to be met by Visakhapatnam Urban Development Authority."

(iv) In furtherance of the aforementioned decision, advertisement was published in Economic Times dated 23-5-2003 inviting joint partners to design, promote and build mega housing projects with emphasis on LIG and MIG houses. For the sake of reference, relevant portion of the advertisement is reproduced below:

VISAKHAPATNAM URBAN DEVELOPMENT AUTHORITY

VUDA INVITES JOINT PARTNERS TO DESIGN, PROMOTE AND BUILD MEGA HOUSING PROJECTS WITH EMPHASIS ON LIG AND MIG HOUSES

The interested parties may visit the following VUDA sites and make available pre-feasibility project reports by the end of June, 2003.

S.No.	Project Site	Extent
1)	Rushikonda	Ac.10.00
2)	Madhurawada	Ac.40.00
3)	Akkireddi Palem	Ac.17.00
4)	Vadlapudi	Ac.08.24

Eligibility: Housing projects executed with 10,00,000 sft. Plinth area

For further details contact: **Vice-Chairman, VUDA, Visakhapatnam**
Ph: 0891-2754189, Fax: 0891-2754189
E-mail: Web: www.vuda.net.

Vice-Chairman
VUDA

(v) After one month and ten days, another advertisement was published in Economic Times dated 2-7-2003, the relevant extracts of which are reproduced below:

VISAKHAPATNAM URBAN DEVELOPMENT AUTHORITY

VUDA INVITES JOINT PARTNERS TO DESIGN, BUILD AND PROMOTE MEGA HOUSING PROJECTS WITH EMPHASIS ON LIG/MIG HOUSES

VUDA proposes joint venture partnership in developing Mega Housing Projects by establishing self-contained communities with state-of-art amenities. The interested parties may visit VUDA sites and make available pre-feasibility project reports by 15th July, 2003.

Eligibility: Housing projects executed with 10,00,000 sft. Plinth area.

For further details: contact
Vice-Chairman, VUDA,
Siripuram Junction, Visakhapatnam – 530 002
Ph: 0891-2754189, Fax: 0891-2754189
E-mail: vcvuda@hotmail.com
Web: www.vuda.org or www.vuda.net

D. SREENIVASULU, IAS
Vice-Chairman,
VUDA

(vi) Simultaneously, letters dated 23-5-2003 were addressed to the following developers inviting them for developing the land:

a) Builders Association of India, New Delhi

b) Bengal Ambhuja Housing Development Ltd., (A joint enterprise of West Bengal Housing Board and Gujarat Ambhuja Cements Ltd.,), Calcutta.

c) Tata Housing Development Co., Ltd., Colaba, Mumbai.

d) Larsen & Toubro Limited, Bangalore.

e) Sugam Griha Nirman Pvt., Ltd., Calcutta

f) DLF Universal Limited, Gurgaon.

g) R.V.R. Projects Pvt. Limited, Visakhapatnam

h) Creative Builders, Mylapor, Chennai

i) Synanda Developers & Builders Pvt. Ltd., Bangalore.

j) Ruchi Enterprises, New Delhi.

(vii) In response to the aforementioned advertisements and the letters sent by VUDA, ten firms, namely, Bengal Ambhuja Housing Development Ltd., Nahalchand Laloochand Pvt., Limited, Mumbai, Ambience Properties Limited, Secunderabad (respondent No.4), Larsen & Toubro Limited, Hyderabad, Evan Lim & Co. Pvt. Limited, Singapore, SVEC Constructions Limited, Hyderabad, Maytas Infra Private Limited, Hyderabad, IVRCL Infrastructures and Projects Limited, Hyderabad, CESMA International Private Limited, Singapore and Lanco, Hyderabad, expressed their willingness to participate in the process of developing the site and submitted their profiles. Four of them, including respondent No.4, also submitted their pre-feasibility reports. The same were considered in the meeting of the Technical Committee of VUDA held on 17-7-2003. The Technical Committee short-listed two of the four firms, namely, M/s.Ambience Properties (India) Private Limited, Hyderabad and M/s.IVRCL Infrastructure Constructions, Hyderabad and opined that both the firms can be allotted projects in the following order of priority:

1) M/s.Ambience Properties (India) Private Limited, Hyderabad
2) M/s.IVRCL Infrastructure Constructions, Hyderabad.

(viii) In the meanwhile, vide its letter dated 16-7-2003, respondent No.4 informed VUDA that developing a small parcel of land measuring Ac.10-00 (Rushikonda Project) will be technically and commercially unviable and, therefore, allocation of not less than 40 to 50 acres may be considered for the project. This proposal of respondent No.4 was accepted by the concerned authorities of VUDA. After sometime, respondent No.4, vide its letter dated 17-10-2003, submitted the estimated

cost of the project with the salient features and profitability statement for the development of a 50 acre township at Rushikonda. The proposal of respondent No.4 was accepted by the Board of VUDA and, on that basis, letter of acceptance dated 15-12-2003 was issued to respondent No.4 for entering into a Development Agreement in respect of 50 acres site situated at Rushikonda layout. Later on, at the instance of respondent No.4, VUDA entered into an agreement with Gandeva Properties Private Limited (respondent No.3) for utilization of the land for establishing a township. Paragraph 4.1 of the agreement reads as under:

> **"4.1. Commercial exploitation of said land:** Understanding with regard to development and commercial exploitation of land admeasuring approximately 50 (fifty) Acres comprised in Survey No.336/P (Part) which was left over as unplotted bulk land, (earlier being non-feasible hillock pocket) situated at Rushikonda, Madhurawada Village, Visakhapatnam (Rural) Mandal, Visakhapatnam District, as per the site plan enclosed duly initialed for the purpose of identification and forming part of this Agreement more fully described in the **Schedule** below (**Said Land**), for setting up a self-contained satellite township (**Said Township**)."

Thereafter, the matter appears to have been referred to the State Government for approval. The latter decided to direct VUDA to cancel the tender process for Rushikonda Township Project on the ground that there was steep increase in the prices of real estate in Visakhapatnam. Accordingly, Memo No.15533/H2/2003/MA dated 20-11-2004 was sent to the Vice-Chairman of VUDA, who, in turn, sent letter R.C.No.1161/Mega.Hg-II/03/L3 dated 23-11-2004 to respondent No.4 for cancellation of the tender process.

(ix) The aforementioned communications were challenged by respondent No.3 in Writ Petition No.23189 of 2004. Simultaneously, respondent Nos.3 and 4 initiated arbitration proceedings for award of compensation to the tune of Rs.51 crores. The writ petition filed by respondent No.3 was allowed by the learned Single Judge on 27-4-2005 and Memos dated 20-11-2004 and 23-11-2004 issued by the State

Government and the Vice-Chairman of VUDA respectively were quashed. The learned Single Judge held that in exercise of the power vested in it under Section 34 (1) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short 'the Act'), the State Government could not nullify the contract entered into between VUDA and respondent No.3.

(x) The order of the learned Single Judge was challenged by VUDA and the State Government in Writ Appeal Nos.1087 and 1772 of 2005 respectively. During the pendency of the appeals, respondent No.3 came out with a proposal for out of court settlement by agreeing to increase the minimum guaranteed amount payable to VUDA by 30% from the existing level; to forego Rs.5 lakhs to be contributed by VUDA towards marketing expenses and to purchase 7.5% of VUDA's share in the proposed club house project at a pre-fixed price of Rs.30 lakhs. Respondent No.3 also proposed to sell the cottages so as to enure 7.5% extra revenue to the government. Initially, the VUDA authorities did not accept the proposal of respondent No.3, but after some negotiations with respondent Nos.3 and 4, the Vice-Chairman of VUDA made a reference to the State Government, which, in turn, accepted the revised proposal and issued Memo No.15533/H2/2003, MA, dated 29-7-2005 whereby Vice-Chairman of VUDA was directed to enter into fresh agreement with the developer. It was also decided to withdraw the writ appeals pending in the High Court. Thereafter, fresh Development Agreement-cum-Power of Attorney was executed on 26-8-2005 between VUDA through its Chief Engineer, respondent Nos.4 and 3 who have been described as agreement holders/consenting parties and M/s.Radiant Developers Private Limited, who has been described as developer. As a sequel to this, the writ appeals filed by VUDA and the State Government were withdrawn.

The petitioner has questioned the allotment of 50 acres of land to respondent Nos.3 and 4 mainly on the ground that the decision of the authorities of VUDA is highly detrimental to public interest inasmuch as the cost of land is about

Rs.72 crores whereas it has been given away for a paltry sum of Rs.13 crores. It is also the case of the petitioner that while the advertisement issued by VUDA was meant only for 10 acres of land, respondent Nos.1 and 2 have given away 50 acres of land to respondent No.3. Yet another plea taken by the petitioner is that while the resolution passed by VUDA contemplated development of land for construction of houses of LIG and MIG category, respondent Nos.3 and 4 have been allowed to construct houses for economically affluent classes and, in this manner, the very purpose of allotment has been defeated. In the reply affidavit dated 12-2-2006 filed by Sri M. Ananda Rao, General Secretary of the petitioner, it has been further averred that as per the approved layout of Rushikonda, total area earmarked for residential purpose was approximately 10 acres excluding hill, roads, green belt area, primary school, shopping centre and water channel and even according to the zonal development plan approved by the Government of Andhra Pradesh, vide G.O.Ms.No.376, MA, dated 22-7-1994, the residential area is only 10 acres, excluding hill, roads, green belt area etc., but the VUDA authorities prepared fresh plan without showing hill and other amenities, including green belt. The deponent has pleaded that before changing the zonal development plan, no notification was issued inviting objections from the public.

In the counter-affidavit dated 2-1-2006 filed by Sri D. Muralidhar Reddy (Secretary of VUDA), it has been averred that after developing Rushikonda layout, the developed plots were sold out except a small hillock measuring about 50 acres, which could not be developed because of undulated terrain and steep contours. That land was offered many a times for bulk allotment, but no one came forward because of its peculiar topography. Therefore, advertisement was issued inviting joint venture partners to design, promote and build mega housing projects in an extent of 10 acres at Rushikonda along with three other locations with an emphasis on LIG and MIG houses. The interested parties were asked to submit their pre-feasibility reports by the end of June 2003.

Simultaneously, separate letters were addressed to ten reputed developers inviting them for developing the land. All the developers who visited the site expressed their unwillingness and, on the request made by one of them, an offer was given to all the developers to develop larger chunk of land. Subsequently, another advertisement was issued on 2-7-2003 inviting joint venture partners to develop mega housing projects without mentioning the area. In response to the second advertisement, respondent No.4 sent letter dated 16-7-2003 stating therein that it will be difficult to achieve a commercially viable proposition by land of less than 40 to 50 acres. After considering that communication, Technical Committee of VUDA short-listed respondent No.4 and M/s.IVRCL Infrastructures and Projects Limited, Hyderabad and ultimately the offer of respondent No.4 was accepted. Accordingly, letter of acceptance was issued in favour of respondent No.4 on 15-12-2003 and, at the latter's instance, Memorandum of Understanding (MOU) was signed with respondent No.3. However, the same had to be cancelled in furtherance of direction given by the State Government.

Sri Muralidhar Reddy has further averred that, after decision of Writ Petition No.23189 of 2004 filed by respondent No.3 questioning the government's decision to cancel the MOU, a compromise was entered into and fresh Development Agreement was entered with respondent No.3 entitling the latter to utilize the land of Rushikonda layout for a mega housing project. On the issue of price, Sri Muralidhar Reddy has averred that some of the plots were sold in August 2005 @ Rs.5,000/- to Rs.8,500/- per square yard, but the same cannot be made basis for nullifying the agreement entered into between VUDA and respondent No.3 because letter of acceptance was issued in favour of respondent No.4 in December 2003. As regards construction of LIG and MIG houses, the stand taken on behalf of VUDA is that nobody has come forward for construction of houses at the site in question and, therefore, the land has been given to the developer for a mega housing project. In an additional counter-

affidavit dated 20-2-2006 filed on behalf of respondent No.2 by Sri D. Venkataratnam, it has been averred that Rushikonda is a non-plotable area consisting of hilly terrain and, unless sophisticated building technology is utilized, it is not possible to construct houses on the hills and, by allotting the land to respondent No.3 in the form of joint venture, VUDA will be able to derive some revenue.

In the counter-affidavit, Sri S. Viswanatha Rao, Officer on Special Duty, Municipal Administration and Urban Development Department, Government of Andhra Pradesh has filed affidavit on behalf of respondent No.1. He has averred that the intention of VUDA in undertaking the mega housing project at Rushikonda under public private partnership is to facilitate core housing development in the area. He has further averred that the subject land is a hill-poramboke, which was considered non-feasible for plotted development at the time of developing a layout in the year 1994-95 and, therefore, it was left out. Later on, it was decided to take up mega housing project by involving private developer having requisite experience and capacity. This resulted in avoidance of huge investment by VUDA. According to Sri Viswanatha Rao, nearly 60% of land (open spaces and roads) will continue to vest with VUDA and, even after development, plotted/salable area will be registered by VUDA directly in favour of prospective buyers.

At this stage, we consider it imperative to notice the following developments, which have taken place after 27-3-2006 i.e., the date on which the order was reserved:

i) While dictating the order, it was noticed that the second development agreement was entered into between VUDA on the one hand and respondent Nos.3 and 4 and M/s.Radiant Developers Private Limited on the other hand, but, M/s.Radiant Developers Private Limited had not been impleaded as party to the writ petition. Therefore, the case was

listed for further consideration.

ii) On 26-6-2006, learned counsel for the petitioner sought adjournment for impleading M/s.Radiant Developers Private Limited as party to the writ petition.

iii) Thereafter, the petitioner filed WPMP. No.16480 of 2006 for impleading M/s.Radiant Developers Private Limited as party respondent. That application was allowed on 3-7-2006.

iv) On 9-8-2006, the case was adjourned at the request of the counsel appearing for VUDA, who sought leave to file supplementary affidavit. Thereafter, WPMP.No.22525 of 2006 was filed on behalf of VUDA for filing affidavit of Sri K.Anand Babu, Chief Urban Planner, VUDA along with some documents.

v) Further arguments were also heard on 30-8-2006 and the following order was passed:

"WPMP No.22525 OF 2006

Sri Vilas V.Afzulpurkar assisted by Smt. Preethi Reddy for the applicant.

Sri S.V.Ramana representing Sri O.Manohar Reddy for Non-applicant No.1.

Sri Deepak Bhattacharjee for non-applicant No.5.

This is an application on behalf of Visakhapatnam Urban Development Authority for grant of leave to file blue print of the approved layout plan, physical plan based on the layout plan and copies of photographs dated 07-12-2004.

We have heard learned counsel for the parties and perused the affidavit of Sri K. Anand Babu, Chief Urban Planner, Visakhapatnam Urban Development Authority and are convinced that the documents annexed with the application should be taken on record.

Hence, the application is allowed. Documents filed with the affidavit of Sri K.Anand Babu are taken on record. The same be annexed with the paper book of the main case.

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Further arguments heard. In order to verify whether the land allotted to respondent Nos.4 and 5 forms part of hillock, we deem it proper to direct District Judge, Visakhapatnam to depute a senior officer of the rank of Additional District Judge to visit the site, inspect the area, check the revenue records and send a report to this Court whether the allotment made in favour of respondent Nos.4 and 5 constitute a part of Rushikonda hill. The concerned officer may take assistance of the Mandal Revenue Officer and surveyor and any other authority of the Visakhapatnam Urban Development Authority for the purpose of measuring the area.

The report prepared by the judicial officer to be nominated by the District Judge be sent to this Court within a period of three weeks.

The judicial officer to be nominated by the District Judge may, if he so considers necessary, give notice to the representatives of the parties to remain present at the time of inspection.

District Collector, Visakhapatnam is directed to provide all assistance to the judicial officer for carrying out the work of inspection.

List the case on September 27, 2006."

vi) In compliance of the aforementioned order, District Judge, Visakhapatnam deputed Sri E.Srinivasa Raju, III Additional District Judge, Visakhapatnam, to visit the site, inspect the area, check the Revenue records and submit a report. Sri E. Srinivasa Raju submitted report dated 14-9-2006, which was forwarded by District Judge, Visakhapatnam to this Court along with letter dated 15-9-2006. The report prepared by Sri E. Srinivasa Raju was taken on record on 27-9-2006. For the sake of reference, paragraphs 9 to 12 of the report are extracted below:

"9. For the purpose of locating 'Rushikonda hill', I have verified Madhurawada village map (No.18), Rushikonda map (No.6) and Endada village map (No.21) as produced by the

M.R.O., Visakhapatnam (Rural) because, those three villages are adjoining villages vide village map Nos.1 to 4.

10. 'Rushikonda hill' is not found in Madhurawada village map vide village map No.1 and Rushikonda village map No.2. But, however, 'Rushikonda hill' is located in Endada village map vide village map No.3 comprised in S.No.19 measuring 150' height as per F.M.B. vide No.5.

For the purpose of its classification, I verified Settlement Fair Adangal of Endada village vide No.6 and Manuscript Diglot Register (M.D.R.) of Endada villave vide No.7 as per which, S.No.19 of Endada village is classified as 'poramboke konda' (hill).

11. 'Rushikonda hill' is located in Endada village as shown in Endada village map vide Nos.3 and 4 and it has nothing to do with the subject matter site. The reason being Madhurawada village where the subject matter site is located and Endada village where 'Rushikonda hill' is located are separated by Rushikonda village. To put it differently, Rushikonda village lies between Madhurawada village and Endada village.

12. The documents viz., Madhurawada village map (No.18), Rushikonda village map (No.6), Endada village map (No.21), combined revenue village maps of three villages, F.M.B. of F.No.19 of Endada village, Settlement Fair Adangal of Endada village, Manuscript Diglot Register of Endada, Settlement Fair Adangals for land in S.Nos.332 and 336 of Madhurawada village, F.M.Bs of Madhurawada village for S.Nos.32 and 336, G.O.Ms.No.586, dt.04.05.2006 of Revenue (Registration-I) Department along with Annexure-notification U/Sec.22-A of Registration Act as produced by the M.R.O., Visakhapatnam (Rural), G.O.Ms.No.120, dt.08.02.1994 of Revenue (Assignment-I) Department as produced by the VUDA and a rough plan prepared by me are herewith submitted for kind perusal of the Hon'ble High Court."

Sri O. Manohar Reddy, learned counsel for the petitioner argued that the development agreement entered into between VUDA and respondent No.3 is liable to be declared as nullity because the same is contrary to the zonal plan of the area sanctioned by the State Government vide

G.O.Ms.No.376, MA, dated 22-7-1994, and Section 20 (3) of the Act read with paragraphs 3, 9 and 11 of G.O.Ms.No.913, MA, dated 9-11-1987 and paragraph 6 of G.O.Ms.No.413, dated 26-9-1995. He submitted that the zonal plan sanctioned by the State Government has not been modified by following the procedure prescribed under Section 12 of the Act and argued that the land forming part of hillock, which is required to be used for landscaping and afforestation cannot be utilized for mega housing project by VUDA either on its own or in joint public private partnership. Sri Reddy emphasized that Acs.462.58 cts. of the government land was transferred to VUDA subject to the condition of disposal of land as per the procedure prescribed in G.O.Ms.No.913, MA, dated 9-11-1987 and argued that virtual transfer of 50 acres of land in favour of respondent No.3 otherwise than by way of public auction is legally impermissible. He submitted that in the garb of development agreement, VUDA cannot indirectly dispose of the land to the private developer or even individuals without adopting the methodology of public auction. He then argued that the guidelines issued by the State Government, vide G.O.Ms.No.913, MA, dated 9-11-1987, are in the nature of directions contemplated under Section 34 (1) of the Act and the action taken by VUDA in violation of paragraphs 3, 9 and 11 of those guidelines is liable to be declared as nullity.

Sri Vilas V. Afzulpurkar, Senior Advocate appearing for VUDA, Sri V. Venkata Ramana and Sri Deepak Bhattacharjee, learned counsel for respondent Nos.3, 4 and 5 argued that the development agreement entered into between VUDA and respondent No.3 cannot be annulled on the ground of violation of the provisions of the Act because there is no prohibition against development of land through public private partnership. Sri Afzulpurkar argued that in terms of the development agreement, the land in dispute will continue to vest in VUDA and, therefore, it is not open to the petitioner to challenge the decision of VUDA by describing it as a transfer of the land. He conceded that in terms of the

guidelines issued by the State Government, vide G.O.Ms.No.913, MA, dated 9-11-1987, there is a specific prohibition against the sale or leasing out of hills for any purpose, but argued that the disputed agreement does not relate to hillock and no part of the hillock is going to be affected by execution of the mega housing project by respondent Nos.3, 4 and 5 in collaboration with VUDA. Sri Afzulpurkar then argued that VUDA had resorted to public private partnership for development of the mega housing project because no one was coming forward to develop the area and it was not considered feasible by VUDA to spend huge amount for landscaping or afforestation of the hillock.

The first question which requires determination is whether the decision of VUDA to execute development agreement with the private respondents to develop 50 acres of land of Rushikonda is violative of the provisions contained in the Act. Chapter IV of the Act contains provisions, which regulate development of lands in developed areas notified by the State Government. Section 14 postulates submission of application for development and grant of permission for the purpose of development. Chapter V of the Act contains provisions for acquisition and disposal of land. Section 21 of that chapter, which begins with the non-obstante clause qua Section 13 (3) empowers the Authority or the local authority to undertake or carry out development which has been transferred to it or places at its disposal under Section 18 or Section 20 even if such land is situated in an undeveloped area. These provisions do not contain any prohibition against entering into a development agreement between the development authority and a private entrepreneur. Therefore, the development agreement entered into between VUDA and respondent Nos.3 to 5 cannot be termed as violative of the provisions of the Act and nullified on that ground.

The next question which merits consideration is whether the decision of VUDA to utilize 50 acres of land for mega housing project is violative of Article 14 of the Constitution or is contrary to public interest. A reading of

advertisement dated 23-5-2003 shows that the Vice-Chairman of VUDA had invited joint partners for designing, promoting and building mega housing projects with emphasis on LIG and MIG houses, but no one came forward to accept the proposal. In the subsequent advertisement, which was published on 2-7-2003, there was no mention of the area in which the mega housing project was proposed to be established. In furtherance of the second advertisement and letters dated 23-5-2003 sent by VUDA, a number of parties expressed their willingness to participate in the process of developing the site, but only four of them submitted pre-feasibility report. After short listing, the VUDA authorities preferred respondent No.3, at whose instance, the impugned development agreement was entered. It is neither the pleaded case of the petitioner that it was willing to participate in the process of development of the land for establishing mega housing project nor any material has been placed before the Court to show that any other person was willing to take up the project in 50 acres of land, and on account of the so-called private negotiations made by the VUDA authorities with respondent Nos.3, 4 and 5, such person was deprived of an opportunity to negotiate with VUDA for development of the land for mega housing project. In its very nature, the project involving development of 50 acres of land under public private partnership warranted consideration of the offers made by only those who had the capability to execute the project. Such a case cannot be treated at par with allotment of a few hundred yards of land in which large number of people could participate. Therefore, the decision of VUDA to enter into development agreement with respondent Nos.3, 4 and 5 cannot be declared as violative of Article 14 of the Constitution, more so, because, before entering into the impugned agreement, VUDA had sent offers to ten other well-known builders of the country and invited them to participate in the development project.

The issue which remains to be considered is whether the agreement in question is violative of the policy contained in G.O.Ms.No.913, MA,

dated 9-11-1987. At one stage, we thought of quashing the development agreement on the ground that Rushikonda hillock was sought to be utilized for building a mega housing project and this would have been in clear violation of paragraphs 3, 9 and 11 of the G.O. However, in view of the supplementary affidavit filed by Sri K.Anand Babu, Chief Urban Planner, VUDA and the report prepared by Sri E. Srinivasa Raju, III Additional District Judge, the relevant portions of which have been extracted above, it is clear that the execution of the project will not result in encroachment of Rushikonda hill and no part of the hill is going to be utilized for construction of houses or any other facilities.

For the reasons mentioned above, the writ petition is dismissed. However, by way of abundant caution, we make it clear that respondent Nos.3, 4 and 5 shall not, in the process of execution of mega housing project, encroach upon or, in any manner, utilize Rushikonda hill or any part thereof and if they do so, any public spirited person shall be free to bring this deviation to the notice of the State Government for appropriate corrective action. Such person may also move this Court for preventing respondent Nos.3 to 5 from encroaching or utilizing Rushikonda hill or any part thereof for execution of mega housing project or any ancillary purpose.

The restriction contained in the operative part of this order shall, however, not preclude the State Government and VUDA from developing the hill in accordance with paragraphs 9 and 11 of G.O.Ms.No.913, MA, dated 9-11-1987.

G.S. SINGHVI, C.J.

G. BHAVANI PRASAD, J.

September 28, 2006